



IT IS ORDERED as set forth below:

Date: March 14, 2022

**James R. Sacca
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	
	:	CHAPTER 7
WEINSTOCK & SCAVO, P.C.,	:	
	:	CASE NO. 12-80220-jrs
Debtor.	:	
	:	JUDGE SACCA
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WILLIAM J. LAYNG, JR., as Chapter 7 Trustee	:	
for WEINSTOCK & SCAVO, P.C.,	:	
	:	ADVERSARY PROCEEDING
Plaintiff,	:	NO. 21-05122
	:	
v.	:	
	:	
US BANK TRUST NATIONAL ASSOCIATION,	:	
not in its individual capacity but solely as Owner	:	
Trustee for VRMTG Asset Trust, RBC BANK	:	
(USA), PNC BANK, NATIONAL	:	
ASSOCIATION, CHARLTON C. LESTER,	:	
JADE EYE 72 TRUST, INTERNAL REVENUE	:	
SERVICE and JERMAINE BRADLEY,	:	
	:	
Defendants.	:	
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ORDER

This action is before the Court on the *Plaintiff's Motion for Entry of Judgment by Default Against Co-Defendants RBC Bank (USA), PNC Bank, Charlton C. Lester, Jade Eye 72 Trust and Jermaine Bradley* (the “Default Motion”) [Doc. No. 6] filed by William J. Layng, Jr., as chapter 7 trustee, (“Trustee”) and a trial on the merits of the Trustee’s *Complaint to Determine the Validity, Extent and Priority of Liens* filed December 2, 2021 (the “Complaint”). A hearing on the Default Motion and trial on the Complaint was held on March 9, 2022 (the “March 9 Trial”) and based upon all matters of record, including argument of counsel and evidence presented, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Complaint seeks a declaratory judgment to determine the rights and interests of various parties to certain property of the estate known as 2225 Wallace Road, SW, Atlanta, Georgia, 30331 (the “Property”).
2. Sufficient notice of the hearing was provided to all parties and certificates of services attesting to service were filed with the clerk.
3. On April 3, 2017, a judgment was entered in the Superior Court of Fulton County in the case of *OTS, Inc. d/b/a Omnitech Solutions and Omnitech Institute and Charlton Carlos Lester v. Louis R. Cohen and Weinstock & Scavo, P.C.*, civil action file no. 2011CV205919 (the “State Court Case”), against Defendant Charlton C. Lester (“Lester”) in favor of the Debtor, in the principal amount of \$62,317.87, plus interest at the rate of 18%, which judgment is represented by a Writ of Fi. Fa. recorded at Lien Book 3945, page 281, in the records of the Superior Court of Fulton County, Georgia; and represented by Writ of Fi. Fa. recorded at Lien Book 1905, page 489 in the records

of the Superior Court of Dekalb County, Georgia (the “Lester Judgment”). The State Court Case was commenced on September 19, 2011.

4. On June 13, 2017, a judgment was entered in the State Court Case, against OTS, Inc. in favor of the Debtor, in the principal amount of \$112,996.00, plus litigation expenses of \$4,996.10 and post-judgment interest at the rate of 18%, which judgment is represented by a Writ of Fi. Fa. recorded at Lien Book 3978, page 157, in the records of the Superior Court of Fulton County, Georgia; and represented by Writ of Fi. Fa. recorded at Lien Book 1913, page 383 in the records of the Superior Court of Dekalb County, Georgia (the “OTS Judgment”)(the “Lester Judgment” and the “OTS Judgment” are collectively referred to as the “State Court Judgments”).
5. On June 22, 2019 the Trustee filed adversary proceeding no. 19-05234 captioned *Complaint for Turnover of Property of the Estate, for Avoidance of Fraudulent Transfers, and for Other Relief* seeking to avoid the fraudulent transfers of various residential real estate properties and for turnover of same including the Property (the “Fraudulent Transfer Action”).
6. In the Fraudulent Transfer Action a default judgment was entered invalidating the purported transfer of the Property by defendants therein Charlton Carlos Lester (“Lester”) and OTS, Inc. (“OTS”) to Jade Eye 72 Trust. A default judgment was entered in the Fraudulent Transfer Action against Lester and Jade Eye 72 Trust (“OTS”) on May 28, 2020 requiring turnover of the Property to the Trustee. No appeal of the default judgment was filed. Neither Lester nor OTS turned over title in the Property to the Trustee.

7. On July 29, 2020 an order for contempt was entered in the Fraudulent Transfer Action providing, inter alia, that title to the Property be deemed transferred to the Trustee (the “Contempt Order”). No appeal of the Contempt Order was filed. Pursuant to the Contempt Order title in the Property vested in the Trustee for liquidation in satisfaction of the State Court Judgments.
8. The Trustee filed a motion to approve the sale of the Property in the main bankruptcy case (the “Sale Motion”) and an order was entered on January 10, 2022 approving the Sale Motion and authorizing the sale of the Property (the “Sale Order”) [BK Doc. No. 239]. At the hearing on the Sale Motion, Lester appeared and objected to the sale of the Property and the Court overruled all objections.
9. The Property was sold on February 1, 2022 to Harold Ruben Maddox (“Maddox”) pursuant to the Sale Order. The Trustee filed his report of sale on February 3, 2022 [BK Doc. No. 241] reflecting net proceeds of the sale distributed to the estate totaling \$791,392.59.
10. The Complaint and Summons was served on all defendants on December 6, 2021. The Summons and Complaint was properly served on RBC Bank (USA)(“RBC”) by first class pre-paid United States mail addressed to its CEO, W. James Westlake, at RBC’s corporate office in Raleigh, N.C. and RBC’s address reflected on its security deed filed in the real estate records of the Superior Court of Fulton County. No pleadings responsive to the Complaint or Default Motion have been filed by RBC. RBC did not appear at the March 9 Trial and has asserted no interest in the Property in this adversary proceeding despite many opportunities to do so.

11. The Summons and Complaint was properly served on PNC Bank National Association (“PNC”) by first class pre-paid United States mail addressed to its registered agent for service in the State of Georgia. No pleadings responsive to the Complaint or Default Motion have been filed by PNC. PNC did not appear at the March 9 Trial and has asserted no interest in the Property in this adversary proceeding despite many opportunities to do so.
12. The Summons and Complaint was properly served on Jade Eye 72 Trust by first class pre-paid United States mail addressed to its trustee, Jermaine Bradley (“Bradley”), the address of the Property, and the address reflected on its warranty deed filed in the real estate records of the Superior Court of Fulton County. No pleadings responsive to the Complaint or Default Motion have been filed by Jade Eye 72 Trust. Jade Eye 72 Trust did not appear at the March 9 Trial and has asserted no interest in the Property in this adversary proceeding despite many opportunities to do so.
13. US Bank Trust National Association (“US Bank”) filed its answer to the Complaint and appeared through its counsel, Bret Chaness, at the March 9 Trial. Trustee and US Bank entered into a Stipulation of Facts admitted at the March 9 Trial attesting to US Bank’s first priority security interest in the Property (the “First Priority Security Deed”) and to the supporting title documents reflecting the transfer of the First Priority Security Deed to US Bank attached thereto.
14. The Summons and Complaint was properly served on Lester at his address reflected on the clerk’s mailing list, the address of the Property, and his addresses which have appeared on various papers filed with this Court. Lester has filed no pleadings responsive to the Complaint or Default Motion but he did appear at the March 9 Trial.

15. The Summons and Complaint was properly served on Bradley at his addresses reflected on UCC-1 Financing Statements filed in the real estate records of the Superior Court of Fulton County. Bradley has filed no pleadings responsive to the Complaint or Default Motion but he did appear at the March 9 Trial.
16. At the March 9 Trial appearances were made by the Trustee, US Bank, Bradley and Lester. The Trustee testified at the March 9 Trial that the certified title documents showing transfer of the First Priority Security Deed to US Bank and the settlement statement from the sale of the Property to Maddox are authentic. The uncontroverted evidence shows that US Bank holds a first priority security interest in the Property. The Trustee testified that the balance due on the State Court Judgments as of March 9, 2022 plus interest and costs totaled \$308,361.86. No party presented any evidence contesting the Trustee's calculation of the balance due on the State Court Judgments. Lester and Bradley presented no evidence at the March 9 Trial to support their assertions that they have any interest in the Property pursuant to a warranty deed, security deed, or other valid lien encumbrance. Neither the UCC-1 Financing Statements, Notices of Claim of Deed nor any other filings by Lester and Bradley create any liens on the Property that are valid or supersede the orders of this Court in the Fraudulent Transfer Action.
17. At the March 9 Trial the Trustee admitted into evidence the Seller's Settlement Statement from the closing of the sale of the Property to Maddox, the Stipulation of Fact with US Bank and a title certificate certifying that as of February 17, 2022 title to the Property is vested in Maddox.

ORDER

Based upon the foregoing findings and conclusions, it is ORDERED that:

1. Judgment on the merits, or in the alternative by default, is hereby entered against PNC, RBC, Jade Eye 72 Trust, Lester and Bradley that they have no interest in the Property or the proceeds from the Trustee's sale of the Property.
2. Title to the Property is now vested in Maddox by virtue of the Trustee's sale to him.
3. US Bank is entitled to payment on its outstanding First Priority Security Deed on the Property in the amount of \$512,997.30 as of December 9, 2021 plus per diem interest through the payment date and Trustee is directed to make that payment to US Bank.
4. No other person or entity, including RBC, PNC, Lester, Jade Eye 72 Trust or Bradley, in any capacity, has any interest in the Property or the sale proceeds. Any interests of RBC, PNC, Lester, Jade Eye 72 Trust and Bradley therein are void according to the foregoing Findings of Fact and Conclusions of Law.
5. The balance of the proceeds from the sale of the Property after satisfaction of the US Bank First Priority Security Deed shall be applied in satisfaction of the amounts due to the estate on the State Court Judgments.

END OF DOCUMENT

Prepared by:

THEODORE N. STAPLETON, P.C.

By: /s/ Theodore N. Stapleton

THEODORE N. STAPLETON

Georgia Bar No. 675850

Attorneys for Plaintiff

Suite 100-B

2802 Paces Ferry Road

Atlanta, Georgia 30339

Telephone: (770) 436-3334

tstaple@tstaple.com

DISTRIBUTION LIST

Theodore N. Stapleton
Suite 100-B
2802 Paces Ferry Road
Atlanta, Georgia 30339

Charlton Carlos Lester
3434 Hamlin Square, S.W.
Atlanta, GA

Charlton C. Lester
2864 Georgian Dr. West
Chamblee, GA 30341-4858

Internal Revenue Service
Bankruptcy Section
401 W. Peachtree St. NW
Room 900 Stop 334D
Atlanta, GA 30308

RBC Bank (USA)
c/o Lending Service Center
PO Box 1220
Rocky Mount, NC 27802

Jermaine Bradley
150 Campbellton Road
Fairburn, GA 30213

Jermaine Bradley
PO Box 297
Union City, GA 30291 30331

Lisa Caplan, Esq.
Rubin Lubin, LLC
3145 Avelon Ridge Place
Suite 100
Peachtree Corners, GA 30071

Charlton C. Lester
PO Box 492289
Atlanta, GA 30349

Vivieon Jones
Assistant United States Attorney
Northern District of Georgia
75 Ted Turner Drive SW,
Suite 600
Atlanta, GA 30303

US Bank Trust National Assoc.
as Owner Trustee for VRMTG Asset Trust
888 7th Avenue, 10th Floor
New York, NY 10019

PNC Bank,
National Association Corporation Service Company
2 Sun Court, Suite 400
Peachtree Corners, GA 30092

Charlton C. Lester
PO Box 43846
Atlanta, GA 30336

Charlton C. Lester
2225 Wallace Road, SW
Atlanta, GA 30331

Internal Revenue Service
PO Box 7346
2970 Market Street
Philadelphia, PA 19104

Jermaine Bradley
150 Campbellton Street
Fairburn, GA 30213

RBC Bank (USA)
W. James Westlake, CEO
301 Fayetteville Street
Suite 2100
Raleigh, NC 27601

Bret Chaness
Rubin Lublin, LLC

3145 Avalon Ridge Place
Suite 100
Peachtree Corners, GA 30071